

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

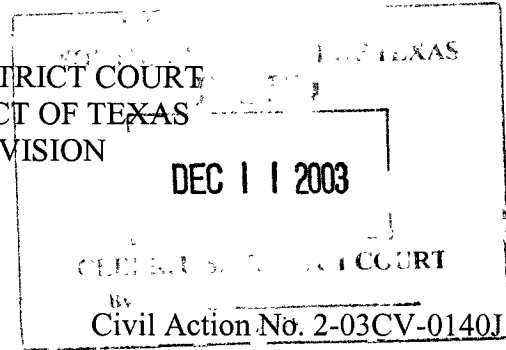
JAMES AVERY RUSH, IV

Plaintiff,

v.

NATIONAL BOARD OF MEDICAL
EXAMINERS,

Defendant.



**PLAINTIFF'S MOTION FOR LEAVE TO
AMEND COMPLAINT AND SUPPORTING BRIEF**

Plaintiff moves the Court for leave to file Plaintiff's First Amended Complaint, as follows:

1. Nature of changes in the proposed amended complaint.

Even though the cut off date for amending pleadings is January 19, 2004, Plaintiff moves the Court to grant Plaintiff leave to amend his complaint to address issues that will allow the Court to adjudicate all matters in dispute between the parties and will not operate as a surprise to Defendant. The proposed amended complaint, a copy of which is attached as exhibit 1, includes, in addition to the allegations of Plaintiff's original complaint, (i) a request that the Court declare that one or more of the accommodations Plaintiff requested for the USMLE Step 1 and Step 2 tests stated below are reasonable, and (ii) seeks injunctive relief for reasonable accommodations on both the Step 1 and Step 2 tests. Plaintiff's Original Complaint sought relief only for the Step 1 test and addressed the single accommodation of double time.

2. Defendant is not surprised or harmed by the additional allegation.

Defendant cannot credibly claim to be surprised or prejudiced by the addition of these issues.

(a) On or about October 24, 2003, Plaintiff forwarded to Defendant his application for the USMLE Step 1 and Step 2 tests and a request for accommodations on those tests. That request includes the following accommodations:

1. Providing an oral test with short questions propounded by persons knowledgeable in the subject areas to be tested, with Plaintiff providing oral responses. The test would not be the same as the test administered to applicants without reading disabilities.
2. Providing a reader for the tests.
3. Providing extra time or unlimited time on the tests in half-day sessions followed by at least eighteen hours of rest time.
4. A separate room for Plaintiff.
5. Unlimited time on the tests in half day testing sessions followed by at least eighteen hours of rest time.

(b) The requested accommodations are consistent with Defendant's obligation arising from its offering examinations for certification or professional purposes, which is to **best assure** that the result of any examination administered to a disabled individual accurately reflect Plaintiff's aptitude or achievement level rather than his impaired reading skills. 28 C.F.R. §36.309(b). Defendant must make "reasonable accommodations to the known physical or mental limitations" of Plaintiff. 42 U.S.C. 12112(b)(5)(A)

(c) On October 20, 2003, Plaintiff submitted expert reports in this case which included expert opinions that the accommodations described above were reasonable. In an expert report dated November 17, 2003 Defendant's expert Dr. Joseph Bernier disagreed with the conclusion that the requested accommodations were reasonable.

(d) The cut off date for amending pleadings is January 19, 2004 and Plaintiff's counsel first requested Defendant's counsel to agree to this motion on December 1, 2003.

3. The amended complaint addresses all disputes between the parties.

Additionally, justice is served by granting this motion because adding requests for accommodations on the Step 2 test to Plaintiff's complaint means that all matters in controversy between Plaintiff and Defendant will be resolved in this action. If Plaintiff were to obtain a permanent injunction requiring accommodations only for the Step 1 test, Defendant may claim not be bound to do so on the Step 2 test.

WHEREFORE, Plaintiff prays that the Motion for Leave to Amend should be granted.

DATED: December 11, 2003

Respectfully submitted,

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Attorneys for Plaintiff

CERTIFICATE OF CONFERENCE


On December 1, 2003, I requested one of the counsel for Defendant in this case to agree to Plaintiff's Motion for Leave to Amend. On December 4, 2003, Christian Stewart, one of Defendant's counsel, requested that I furnish a copy of the purposed amended complaint, which I did. On December 10, 2003, Christian Stewart informed me that Defendant would not agree to the motion.


JOHN MOZOLA

CERTIFICATE OF SERVICE

This is to certify that on December 11, 2003, a true and correct copy of the above and foregoing was served on counsel for the Defendant via hand delivery, addressed as follows:

Thomas C. Riney
GWINN & ROBY
600 Maxor Building
320 S. Polk Street
Amarillo, Texas 79101



JOHN MOZOLA